

## CHAPTER 277

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**TAXATION**


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**HOUSE BILL 20-1420**

BY REPRESENTATIVE(S) Sirota and Gray, Benavidez, Gonzales-Gutierrez, Jaquez Lewis, Kipp, Lontine, Weissman, Woodrow, Arndt, Bird, Buckner, Buentello, Caraveo, Cutter, Duran, Esgar, Herod, Hooton, Jackson, Kennedy, Kraft-Tharp, McCluskie, Michaelson Jenet, Mullica, Singer, Snyder, Tipper, Valdez A., Valdez D.;

also SENATOR(S) Moreno and Hansen, Bridges, Danielson, Fenberg, Fields, Foote, Ginal, Gonzales, Pettersen, Story, Todd, Williams A., Winter, Garcia.

**AN ACT**

**CONCERNING THE ADJUSTMENT OF CERTAIN STATE TAX EXPENDITURES IN ORDER TO ALLOCATE ADDITIONAL REVENUES TO THE STATE EDUCATION FUND, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1. Short title.** The short title of this act is the "Tax Fairness Act".

**SECTION 2.** In Colorado Revised Statutes, 39-22-104, **add (3)(l), (3)(m), (3)(n), and (3)(o)** as follows:

**39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - legislative declaration - definitions - repeal.** (3) There shall be added to the federal taxable income:

(l) FOR INCOME TAX YEARS ENDING ON AND AFTER THE ENACTMENT OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB. L. 116-136, REFERRED TO IN THIS SECTION AS THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO THE DIFFERENCE BETWEEN A TAXPAYER'S NET OPERATING LOSS DEDUCTION AS DETERMINED UNDER SECTION 172 (a) OF THE INTERNAL REVENUE CODE BEFORE THE AMENDMENTS MADE BY SECTION 2303 OF THE "CARES ACT" AND THE TAXPAYER'S NET OPERATING LOSS DEDUCTION AS DETERMINED UNDER SECTION 172 (a) OF THE INTERNAL REVENUE CODE AFTER THE AMENDMENTS MADE BY SECTION 2303 OF THE "CARES ACT".

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(m) FOR INCOME TAX YEARS ENDING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO A TAXPAYER'S EXCESS BUSINESS LOSS AS DETERMINED UNDER SECTION 461 (I) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO THE AMENDMENTS MADE BY SECTION 2304 OF THE "CARES ACT", BUT WITH REGARD TO THE TECHNICAL AMENDMENT MADE BY SECTION 2304 (b)(2)(B) OF THE "CARES ACT".

(n) FOR INCOME TAX YEARS ENDING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO THE AMOUNT IN EXCESS OF THE LIMITATION ON BUSINESS INTEREST UNDER SECTION 163 (j) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO THE AMENDMENTS MADE BY SECTION 2306 OF THE "CARES ACT".

(o) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2023, AN AMOUNT EQUAL TO THE DEDUCTION ALLOWED UNDER SECTION 199A OF THE INTERNAL REVENUE CODE FOR A TAXPAYER WHO FILES A SINGLE RETURN AND WHOSE ADJUSTED GROSS INCOME IS GREATER THAN FIVE HUNDRED THOUSAND DOLLARS, AND FOR TAXPAYERS WHO FILE A JOINT RETURN AND WHOSE ADJUSTED GROSS INCOME IS GREATER THAN ONE MILLION DOLLARS; EXCEPT THAT THIS SUBSECTION (3)(o) DOES NOT APPLY TO A TAXPAYER WHO FILES A SCHEDULE F, PROFIT OR LOSS FROM FARMING, OR SUCCESSOR FORM, AS AN ATTACHMENT TO A FEDERAL INCOME TAX RETURN.

**SECTION 3.** In Colorado Revised Statutes, 39-22-304, **add** (2)(i) as follows:

**39-22-304. Net income of corporation - legislative declaration - definitions - repeal.** (2) There shall be added to federal taxable income:

(i) FOR INCOME TAX YEARS ENDING ON AND AFTER THE ENACTMENT OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB. L. 116-136, REFERRED TO IN THIS SECTION AS THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AND FOR INCOME TAX YEARS BEGINNING ON AND AFTER THE ENACTMENT OF THE "CARES ACT", BUT BEFORE JANUARY 1, 2021, AN AMOUNT EQUAL TO THE AMOUNT IN EXCESS OF THE LIMITATION ON BUSINESS INTEREST UNDER SECTION 163 (j) OF THE INTERNAL REVENUE CODE WITHOUT REGARD TO THE AMENDMENTS MADE BY SECTION 2306 OF THE "CARES ACT".

**SECTION 4.** In Colorado Revised Statutes, 39-22-504, **amend** (1) as follows:

**39-22-504. Net operating losses.** (1)(a) A net operating loss deduction shall be allowed in the same manner that it is allowed under the internal revenue code except as otherwise provided in this section. The amount of the net operating loss that may be carried forward and carried back for Colorado income tax purposes shall be that portion of the federal net operating loss allocated to Colorado under this ~~article~~ ARTICLE 22 in the taxable year that the net operating loss is sustained.

(b) FOR LOSSES INCURRED AFTER DECEMBER 31, 2017, THE EIGHTY PERCENT LIMITATION SET FORTH IN SECTION 172 (a)(2) OF THE INTERNAL REVENUE CODE SHALL APPLY WITHOUT REGARD TO THE AMENDMENTS MADE IN SECTION 2303 OF THE MARCH 2020 "CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT", PUB. L. 116-136.

**SECTION 5.** In Colorado Revised Statutes, 39-22-123.5, **amend** (1)(h) and (2); **repeal** (3); and **add** (2.5) as follows:

**39-22-123.5. Earned income tax credit - not a refund of excess state revenues - trigger - legislative declaration - definition.** (1) The general assembly hereby finds and declares that:

(h) Now, therefore, it is the intent of the general assembly to establish a permanent and refundable state earned income tax credit for eligible Colorado taxpayers. ~~which is equal to ten percent of the federal earned income tax credit.~~ The intended purpose of this credit is to help individuals and families achieve greater financial security and to help Colorado's economy.

~~(2) (a) For an income tax year specified in subsection (3) of this section~~ COMMENCING PRIOR TO JANUARY 1, 2022, a resident individual who claims an earned income tax credit on the individual's federal tax return is allowed an earned income tax credit against the taxes due under this ~~article~~ ARTICLE 22 that is equal to ten percent of the federal credit that the resident individual claimed on his or her federal tax return for the same tax year.

(b) FOR AN INCOME TAX YEAR COMMENCING ON OR AFTER JANUARY 1, 2022, A RESIDENT INDIVIDUAL WHO CLAIMS AN EARNED INCOME TAX CREDIT ON THE INDIVIDUAL'S FEDERAL TAX RETURN IS ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL TO FIFTEEN PERCENT OF THE FEDERAL CREDIT THAT THE RESIDENT INDIVIDUAL CLAIMED ON HIS OR HER FEDERAL TAX RETURN FOR THE SAME TAX YEAR.

(2.5) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2021, BUT BEFORE JANUARY 1, 2022, A RESIDENT INDIVIDUAL IS ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL TO TEN PERCENT OF THE FEDERAL CREDIT THAT THE RESIDENT INDIVIDUAL WOULD HAVE BEEN ALLOWED, BUT FOR THE FACT THAT THE RESIDENT INDIVIDUAL, THE RESIDENT INDIVIDUAL'S SPOUSE, OR ONE OR MORE OF THE RESIDENT INDIVIDUAL'S DEPENDENTS DO NOT HAVE A SOCIAL SECURITY NUMBER THAT IS VALID FOR EMPLOYMENT.

(b) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 2022, A RESIDENT INDIVIDUAL IS ALLOWED AN EARNED INCOME TAX CREDIT AGAINST THE TAXES DUE UNDER THIS ARTICLE 22 THAT IS EQUAL TO FIFTEEN PERCENT OF THE FEDERAL CREDIT THAT THE TAXPAYER WOULD HAVE BEEN ALLOWED, BUT FOR THE FACT THAT THE RESIDENT INDIVIDUAL, THE RESIDENT INDIVIDUAL'S SPOUSE, OR ONE OR MORE OF THE RESIDENT INDIVIDUAL'S DEPENDENTS DO NOT HAVE A SOCIAL SECURITY NUMBER THAT IS VALID FOR EMPLOYMENT.

(c) FOR PURPOSES OF THIS SUBSECTION (2.5), A "RESIDENT INDIVIDUAL" INCLUDES

A TAXPAYER FILING WITH AN INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER.

~~(3) If a credit is allowed under section 39-22-123 for an income tax year commencing on or after January 1, 2013, the credit allowed under this section may be claimed for any income tax year beginning with the income tax year after the income tax year that the credit is allowed under section 39-22-123.~~

**SECTION 6.** In Colorado Revised Statutes, 24-75-220, **add** (6) as follows:

**24-75-220. State education fund - transfers - surplus - legislative declaration.**

(6) (a) ON MARCH 1, 2021, THE STATE TREASURER SHALL TRANSFER ONE HUNDRED THIRTEEN MILLION DOLLARS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX OF THE STATE CONSTITUTION.

(b) ON MARCH 1, 2022, THE STATE TREASURER SHALL TRANSFER TWENTY-THREE MILLION DOLLARS FROM THE GENERAL FUND TO THE STATE EDUCATION FUND CREATED IN SECTION 17 (4) OF ARTICLE IX OF THE STATE CONSTITUTION.

**SECTION 7. Appropriation.** (1) For the 2020-21 state fiscal year, \$49,002 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$20,580 for use by the taxation and compliance division for personal services;
- (b) \$5,922 for use by the taxpayer service division for personal services; and
- (c) \$22,500 for tax administration IT system (GenTax) support.

**SECTION 8. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: July 11, 2020